

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-2400

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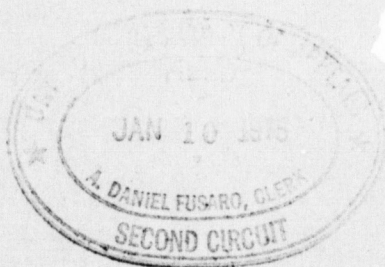
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

-against-

LARRY SESSION,
Defendant-Appellant.

APPELLANT'S APPENDIX



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DATE	PROCEEDINGS
7-8-74	Filed Indictment.
7-22-74	Deft. Session (atty. present) Pleads not guilty. Motions returnable in 10 days. Deft. released on his own recognizance. Case assigned to Judge Weinfield for all purposes. Duffy, J. Deft. Quiles adjourned to 8-19-74. Duffy, J.
	- Over -
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DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
8-16-74	QUILES- adj. to 8-20-74 SESSION- no appearance, B/W ordered.		
8-19-74	BOTH DEFTS- marked of part 1 calender - Owen, J.		
8-20-74	QUILES- Deft. (Atty. present) pleads guilty to count 4 only. P.I.S. ordered. Sentence on 9-13-74 at 10 AM in Rm 1306 Deft. R.O.R. SESSION- Deft. (Atty. present) withdraws his plea of not guilty and pleads guilty. Deft. appears voluntarily, B/W vacated. P.S.I. ordered. Sentence adj. to 9-13-74 at 10 AM in Rm 1306. Deft. R.O.R. - Weinfeld, J.		
9-13-74	(74, 744) JOSE R. QUILES - Filed AJUDGMENT (atty. present) It is adjudged that the defendant is sentenced as a YOUNG ADULT OFFENDER pursuant to Section 5010(a) of Title 18, U.S.Code, as extended by Section 4209 of Title 18, U.S.Code. Imposition of prison sentence on count is suspended. Defendant placed on probation for a period of TWO(2)YEARS subject to the standing probation order of this Court. AND Defendant is FINED \$250.00 on count 4. Fine to be paid within TEN(10)DAYS or defendant to be committed until the fine is paid or he is otherwise discharged according to law. Counts 1,2 and 3 are dismissed on motion of defendant's counsel with the consent of the Government-WEINFELD, J. (copies issued)		
9-24-74	Fine marked satisfied and entered in money judgment book.		
9-24-74	LARRY SESSIONS - Application to withdraw Guilty plea and plead not guilty to Count 1 granted. Case placed on call calendar 10/1/74 at 2:15 P.M. - WEINFELD, J.		
9-26-74	LARRY SESSION - Filed Notice of Motion returnable 9/24/74 permitting deft to withdraw plea of guilty and further order of the Court prohibiting the use of the minutes of proceeding of 8/20/74 from being used against deft. etc.		
10/1/74	LARRY SESSIONS - Trial 10/16/74 at 10AM, Rm.1306 - WEINFELD, J.		
10/16/74	LARRY SESSIONS - Case called. No appearance by defendant. Bench Warrant ordered.		
10/16/74	Trial begun before Weinfeld, J. and a jury as to Deft. Larry Session.		
10/17/74	Trial continued and concluded - Jury Verdict - Deft. GUILTY. Supplemental Pre-sentence investigation ordered. Sentence adjourned to 10/22/74 at 10AM Rm.506. Deft. released on own recognizance. Outstanding bench Warrant vacated - WEINFELD, J.		
Oct. 21-74	Filed Govt's Voir Dire		

Docket Continuation

PROCEEDINGS

Date of
Judgment

10-22-74

LARRY SESSION - Filed JUDGMENT (atty present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for treatment and supervision pursuant to 18 U.S.C.A. Sec. 5010(b) but pursuant to 18 U.S.C.A. Sec. 3651 execution of all except THREE (3) MONTHS on this sentence is suspended and defendant is placed on probation for TWO (2) YEARS pursuant to 18 U.S.C.A. Sec. 5010(a). The period of probation to commence upon release of defendant from the custody of the Attorney General or his authorized representative and to be subject to the standing probation order of this Court. It is recommended that custody of defendant be in an institution designated for treatment of youth offenders. Application for bail pending appeal denied. WEINFELD, J. (copies issued)

10-21-74

JOSE R. QUILES - Filed CJA 20 Appointing John E. LeMoult atty. 1345 Av. of Americas N.Y. 10019 - Original mailed to AO Wash.D.C. for payment - Weinfeld, J.

10-25-74

LARRY SESSION - Filed Notice of Appeal from the Judgment of conviction dtd 10/23/74 (u/n) to Def.; U.S. Atty; U.S.C.A.

10-30-74

LARRY SESSION -- Filed memo-endorsed The rental equipment to play the tapes, the playing of the tapes, and the charge for the technician were in this Court's view necessary. The fact that the govt. foots the bill for the defense does not justify unwarranted expenditures. Moreover, it seems to this Court that discussions with the defendant by counsel should have indicated, in view of the deft's statement that his plea of guilty (later permitted to be withdrawn) should not have been entered. WEINFELD, J.

Oct. 30-74

LARRY SESSION -- Filed CJA 20 Appointing David A. Pravda counsel, 10 E. 40th St. N.Y., original mailed to AO Wash.D.C. for payment - WEINFELD, J.

11-6-74

Session Filed Transcript of record of proceedings, dated 8-20-74

11-11-74

SESSION - Filed memo-endorsed on letter dtd 11/5/74 -- The amount allowed included disbursements incurred, including the video tape rental. The expense was sufficient substantial to require the defense to apply to the court in advance for its approval. The court deems the amount allowed in the circumstance of this case fair and reasonable. The time factor is not the sole consideration in assessing a fair and reasonable fee - WEINFELD, J. (m/n)

11-13-74

Session Filed commitment & entered return, D. ft. delivered to *in dtd 12/15-10-22-74*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v-

JOSE R. QUILES and LARRY SESSION,

Defendants.

: INDICTMENT

: 74 Cr. 673 (EW)

:

:

:

The Grand Jury charges:

1. From on or about the 1st day of January, 1973, and continuously thereafter up to and including the date of the filing of this indictment, JOSE R. QUILES and LARRY SESSION, the defendants, and others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly combined, conspired, confederated and agreed together and with each other to violate Section 1709 of Title 18, United States Code.

2. It was a part of said conspiracy that said defendants, being Postal Service employees, would and did embezzle letters and mail which came into their possession, and which were intended to be conveyed by mail.

OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about the 16th day of February, 1974, at the General Post Office, New York, New York, LARRY SESSION, the defendant, handed a letter to JOSE R. QUILES, the defendant.

2. On or about the 16th day of February, 1974, at the General Post Office, New York, New York, JOSE R. QUILES, the defendant, opened a letter and removed money therefrom.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 16th day of February, 1974
in the Southern District of New York,

JOSE R. QUILLIS

the defendant , being a Postal Service employee did
unlawfully, wilfully and knowingly embezzle a letter
which had come into his possession, and was intended
to be conveyed by mail, addressed to:

Salesian Missions
P.O. Box 1973
c/o First Westchester National Bank
Hamaroneck, New York 10545

(Title 18, United States Code, Section 1709.)

COUNT THREE

The Grand Jury further charges:

On or about the 16th day of February, 1974
in the Southern District of New York,

JOSE R. QUILES

the defendant , being a Postal Service employee did
unlawfully, wilfully and knowingly embezzle a letter
which had come into his possession, and was intended
to be conveyed by mail, addressed to:

Maryknoll Fathers
Maryknoll, New York

(Title 18, United States Code, Section 1709.)

COUNT FOUR

The Grand Jury further charges:

On or about the 16th day of February, 1974
in the Southern District of New York,

JOSE R. QUILES

the defendant , being a Postal Service employee did
unlawfully, wilfully and knowingly embezzle a letter
which had come into his possession, and was intended
to be conveyed by mail, addressed to:

**Franciscan Mission Associates
P. O. Box 593
Mount Vernon, New York 10550**

(Title 18, United States Code, Section 1709.)

FOREMAN

PAUL J. CURRAN
United States Attorney

1 camds
2 UNITES STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
5 UNITED STATES OF AMERICA :
6 -vs- : 74 Cr 673
7 LARRY SESSION, :
8 Defendant :
9 -----X

10 Before:

11 HON. EDWARD WEINFELD,
12 District Judge

13 New York, New York
14 October 16, 1974--10:00 a.m.

15 APPEARANCES:

16 PAUL J. CURRAN, ESQ.,
17 United States Attorney
18 For the Government
19 BY: HOWARD S. SUSSMAN, ESQ., and
20 DON. D. BUCHWALD, ESQ.,
21 Assistant United States Attorneys

22 DAVID PRAVDA, ESQ.,
23 Attorney for the Defendant
24
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2 [In open court]

3 THE CLERK: United States of America against
4 Larry Session. Is the Government ready?

5 MR. SUSSMAN: The Government is ready.

6 THE CLERK: Is the defendant ready?

7 MR. PRAVDA: The defendant is ready to proceed,
8 but he is not personally present in the courtroom right now,
9 your Honor. I think he is delayed somewhere.

10 THE COURT: How can we proceed without him?

11 MR. PRAVDA: I mean in terms of being ready this
12 morning the defense is ready.

13 THE COURT: Well, do you have any information
14 where he is?

15 MR. PRAVDA: He is en route to the courthouse,
16 Judge.

17 THE COURT: Well, do I keep the panel of jurors
18 waiting, or what? How long will it take him to get here?
19 He is supposed to be here at 10:00 o'clock.

20 MR. PRAVDA: I expect him very shortly, Judge.

21 THE COURT: Mr. Sussman, I am prepared to enter-
22 tain a motion in this matter. If you want to wait, all
23 right, but I see no purpose in keeping a panel of jurors
24 waiting here. Defendant was told to be here at 10:00 o'clock
25 sharp.

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2 Mr. Pravda, do you have any word at all about the
3 defendant, or are you just stating that he is going to be
4 here?

5 MR. PRAVDA: I spoke to him last evening, Judge,
6 and we discussed the case and got ready for trial and he
7 indicated he would be here.

8 If you like I will be glad to call his --

9 THE COURT: We can't keep sixty or eighty people
10 waiting for him.

11 MR. PRAVDA: I will be glad to call his residence
12 and find out what time he left this morning.

13 MR. SUSSMAN: I would think, your Honor, that be-
14 fore I made any motion it might be appropriate for Mr. Pravda
15 to do that, to call Mr. Session.

16 THE COURT: Make the telephone call then.

17 [Pause]

18 MR. PRAVDA: Judge, I have a report to make.
19 I spoke with the defendant's mother who indicated that he
20 had gotten a late start this morning but he is gone and
21 based on her estimation of the travel time she estimated
22 he would be here between 11:00 and 11:10.

23 THE COURT: Between 11:00 and 11:30?

24 MR. PRAVDA: No, 11:00 and 11:10.

25 THE COURT: I don't understand. Wasn't he told

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2 to be here at 10:00?

3 MR. PRAVDA: Yes, Judge.

4 THE COURT: Mr. Sussman?

5 MR. SUSSMAN: Would you prefer that I make a motion
6 at the side bar, your Honor?

7 THE COURT: Suppose you come up here.

8 [At the side bar]

9 MR. SUSSMAN: The motion, of course, your Honor,
10 would be for a bench warrant, but if the man in fact is
11 going to turn up at 11:00 or 11:15, though it is a gross
12 inconvenience to the Court, I don't know that a bench warrant
13 is really appropriate. We could certainly apply for one,
14 and if he does turn up vacate it upon his appearance.

15 THE COURT: Well, make your application.

16 MR. SUSSMAN: The Government's application is for
17 a bench warrant for the arrest of Larry Session.

18 THE COURT: The motion is granted.

19 MR. PRAVDA: May I ask for a stay, Judge?

20 THE COURT: No. I'm not going to stay. What do
21 I do, keep this panel here now?

22 MR. SUSSMAN: It is an hour. We are probably go-
23 ing to waste the day if we don't.

24 THE COURT: All right, I will keep them.

25 MR. PRAVDA: I have some question about that,

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2 Judge, I don't know what their own feelings may be about
3 the lateness, but it may work to the disadvantage of the
4 defendant who have heard the --

5 THE COURT: Well, the case was called for trial
6 at 10:00 o'clock.

7 MR. PRAVDA: I appreciate that fact and that
8 defendant was not here at 10:00 o'clock when he should have
9 been, but I think it is still very important that the jury
10 not have any thoughts about the defendant one way or the
11 other.

12 THE COURT: No, this panel is here they are going
13 to stay here now.

14 MR. PRAVDA: If I may have an exception on the
15 record.

16 THE COURT: You may have an exception on the record.
17 That is almost an impudent position you are taking. The
18 defendant is late, inconveniencing the jury, and you want
19 me now to excuse the jury and bring up another panel for him?

20 [In open court]

21 THE COURT: Members of the jury, I am sorry you
22 are inconvenienced. We just have to wait, and as soon as
23 we are ready to proceed, why, we will get started.

24 THE CLERK: This court will take a short recess.

25 THE COURT: Relax in the courtroom here in the

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2 meantime and read the newspapers or whatever you want to do.

3 [Recess]

4 THE CLERK: For trial, United States of America
5 versus Larry Session. Is the Government ready?

6 MR. SUSSMAN: The Government is ready, your Honor.

7 THE CLERK: Is the defendant ready?

8 MR. PRAVDA: The defendant is ready, your Honor.

9 THE COURT: Swear the jurors.

10 [Whereupon a jury of twelve and two alternates
11 were duly impaneled and the following transpired]

12 THE COURT: Members of the jury, most of you are
13 serving for the first time and so I think it is appropriate
14 that I make some comment about your function as jurors and
15 also about trial procedure.

16 I have already told you that your basic function
17 is to decide the fact issues in the case that is about to
18 be tried. You the members of the jury by law are the sole
19 and exclusive judges of the facts, just as I am the sole
20 and exclusive judge of the law. You decide the disputed
21 fact issues in the case.

22 Now obviously in preparation for this duty which
23 comes at the end of the trial it will be important for you
24 to listen carefully to each witness who testifies in the
25 case, and also as I always add to observe each witness who

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2 testifies. You will be called upon to pass on the credibility
3 of witnesses. I don't know a single fact of this case, but
4 it is likely there will be a dispute as to certain events,
5 and this is the point at which you function to decide this
6 dispute and it necessarily will involve, and usually does
7 involve, the credibility of witnesses.

8 Oftentimes it isn't so much what a witness says as
9 how he says it that may give you some clue as to whether or
10 not he is a credible or believable witness. And eventually
11 the judgment of the jurors will be based upon the credibility
12 of the witnesses.

13 So, as I say, it is not only important for you
14 to listen carefully to each witness, but also to observe
15 each witness, his demeanor, his conduct, during the course
16 of the testimony.

17 Also it is important for you to keep an open mind
18 with respect to the ultimate issues you are called upon to
19 decide until the case has been fully concluded.

20 A case can only be presented step by step, witness
21 by witness. We know from experience that oftentimes we will
22 hear a person give us his version of an incident or event
23 which will sound very persuasive or compelling, and yet
24 when we hear another person give his version of that same
25 incident or event what appear to be so persuasive or

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2 compelling in the first instance may be drawn into doubt
3 or dissipated entirely by the subsequent version that you
4 will hear.

5 It is for that reason that I emphasize that you
6 keep an open mind until all the evidence is in. Undoubtedly
7 you may have impressions, all of us do, impressions tell us
8 of events, but it is important not to allow these impressions
9 to become firm and fixed, because if you do then in a sense
10 you are being unfair as far as any subsequent witness is
11 concerned who is called to testify as to the same event.
12 You have foreclosed a fair appraisal of that witness's
13 testimony.

14 So, as I say, while you may have impressions it
15 is important not to allow these to become firmly fixed.
16 Realistically we will have the same view as if there are
17 usually two sides to every story and you will not have heard
18 both versions until you have heard all the witnesses testify.

19 Now, in order to assure that you do keep an open
20 mind with respect to the fact issues I now instruct you that
21 during the progress of the trial, the entire trial, you are
22 not to discuss the case among yourselves or the testimony
23 of any witness among yourselves, nor are you to talk to any-
24 body about the case or allow anybody to talk to you about it.
25 Whatever views you have you keep to yourself, you don't

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2 exchange views until the final part of jury consideration
3 which comes at the end of the trial.

4 Now, this direction for you not to discuss the
5 case is in effect whether or not -- I will repeat it again --
6 continues throughout the entire trial.

7 Now, the trial proper will start with what are
8 called the opening statements by the lawyers, the lawyer
9 representing the Government and the lawyer representing the
10 defendant. The opening statements are sort of a framework
11 of reference to give us an idea of what the case is about.
12 Each lawyer based on his preparation of trial will tell you
13 what he believes the evidence will establish.

14 But, I caution you that however sincerely these
15 statements are made, they are not a substitute for evidence,
16 that the only evidence in the case is that which you will
17 hear from the lips of witnesses sworn in your presence,
18 examined first by the party calling the witness and then
19 cross-examined by the opposing side.

20 The totality of that testimony and such exhibits
21 as the Court will allow in evidence is the basis upon which
22 you will make your fact determination. It is never anything
23 that the lawyer will say about a fact issue, whether it is
24 the statement in the opening, during the progress of the
25 trial or otherwise.

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2 Now, the Government will present its case, and
3 at the conclusion of its presentation the defendant will
4 go forward with his case, and following that the lawyers
5 will again address you. They will review the evidence and
6 urge upon you such inferences as they think the evidence
7 warrants. But, again, in this instance this is what the
8 lawyers think the judgment of the jury should be. It is
9 your determination what it should be, it is you that make
10 the fact-finding and draw the inferences from the evidence.

11 After the lawyers have summed up before you the
12 Court will instruct you as to the law that is applicable
13 in the case. According to how you determine the facts and
14 apply the law you come to what is the logical result, and
15 that is the verdict of the jury. That will be our trial
16 procedure.

17 Now, if counsel are ready to start you may proceed
18 at once with your opening statement.

19 MR. SUSSMAN: Yes, your Honor.

20 If the Court please, Madam Foreman, ladies and
21 gentlemen of the jury. This case, as Judge Weinfeld said
22 before, involves a conspiracy of embezzlement of mail. In
23 plain language, that means conspiracy to steal mail for its
24 contents and money.

25 In the early part of this year, 1974, the defendant

INTERVENING PAGES OF TRANSCRIPT OMITTED

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Husarik - cross

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2 were they?

3 A Mr. Quiles' worktable was a matter of feet behind
4 Mr. Session's table, I believe.

5 Q Would you say five feet?

6 A I would say approximately, yes.

7 Q You say that there came a time, and you are un-
8 certain as to when, when Mr. Quiles took a red and white
9 envelope from his work area and turned and gave it to
10 Mr. Quiles by placing it in his work area; is that correct?

11 A Mr. Session took a letter from his work area --

12 Q And placed it into Mr. Quiles' work area?

13 A Yes, sir.

14 Q Did he hand it to Mr. Quiles hand-to-hand, or did
15 he just drop it in his work area?

16 A I believe Mr. Quiles had mail in his hand at the
17 time, he had his hands into his tray. Mr. Session turned
18 around and more or less waved a letter toward Mr. Quiles
19 and then set it down on his letter tray.

20 Q Did he hold his hand up and wave it, or extend it
21 outward toward Mr. Quiles and wave it?

22 A I don't recall just how it happened, sir.

23 Q Could you, with your movement of your own arm,
24 show the Court and the jury what kind of motion you mean
25 by waving?

21a

2 A Okay. He seemed to take the letter from his tray,
3 he turned around and he more or less shook it toward
4 Mr. Quiles and set it down on his work tray [indicating].

5 Q It was not a secretive operation, he extended his
6 arm and held it out; is that correct?

7 A I don't understand what you mean.

8 Q Well, did he appear to try to, so to speak, hunch
9 over the envelope, or shield or hide the fact that he was
10 passing the envelope to the next work area?

11 A No, sir, he didn't.

12 Q It was open and obvious and he handed it out with
13 his arm and shook it; is that correct?

14 A Yes, sir.

15 Q And when Mr. Quiles subsequently opened the envelope,
16 and I believe you testified he rifled the contents of the
17 envelope; is that correct?

18 A Yes, he rifled the envelope and removed its contents.

19 Q That very selfsame envelope?

20 A Yes.

21 Q When he did that I believe you testified that
22 Quiles placed the envelope flat in his tray and ripped it
23 in the tray?

24 A He held it down in his tray. I don't recall if
25 it was flat on the bottom of the tray, but he didn't hold

INTERVENING PAGES OF TRANSCRIPT OMITTED

2 Q You were looking the same direction as the video
3 machine?

4 A Yes.

5 Q Were you assigned to surveill specific people?

6 A Yes.

7 Q Who were they?

8 A Mr. Session.

9 Q In the observation of him you testified the first
10 thing you saw was him putting a letter under his armpit and
11 giving it to Quiles?

12 A Well, it wasn't the first thing he did. He was
13 doing his work --

14 Q Well, what time did you observe him put a letter
15 under his armpit?

16 A I would say he was on the work floor almost two
17 hours before he did this.

18 Q And he didn't do anything prior to that time that
19 was out of the regulations?

20 A That's correct.

21 Q When you say you observed him put a letter under
22 his armpit, could you describe for the Judge and the jury
23 exactly what you mean by that?

24 A May I show it?

25 Q Yes, by all means. Stand up if you wish.

2 A May I have a piece of paper? He's culling mail
3 out of a tray, rectangular in shape, flat, and the mail
4 lies this way [indicating]. And he came across while culling
5 a particular letter and he took this letter after he had
6 felt it and he put it under his armpit [indicating]. He
7 then walked over to the area where Mr. Quiles was working
8 and he allowed Mr. Quiles to remove this envelope from
9 under his armpit.

10 Q And, sir, can I infer from the way you are standing
11 that you mean that Quiles could come up behind him and slip
12 the letter out?

13 A Well, he walked over to Mr. Quiles.

14 Q Well, did Mr. Quiles take the letter from the
15 rear or from the front?

16 A From the rear section. In other words, Mr. Quiles
17 was facing his back.

18 Q Would you characterize all of this as being
19 surreptitious?

20 A I would say so, yes.

21 Q And in fact, Mr. Hedlund, isn't it so that this
22 was a raucous parody, that it wasn't surreptitious at all?

23 MR. SUSSMAN: Objection.

24 THE COURT: Objection sustained as to form.

25 Q Isn't it a fact that the letter went in-between

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Hedlund - cross

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2 his arm and his chest and he sort of danced over toward
3 Mr. Quiles? Almost as a vaudevillian?

4 A I saw him walk over with the letter under his arm.

5 Q Well, isn't it a fact that what he did was done
6 open and notorious and couldn't help but be observed?

7 MR. SUSSMAN: Objection, your Honor. It has been
8 asked and answered.

9 A I don't know the intentions of Mr. Session at
10 the time. All I can tell is what I saw.

11 Q Why did --

12 A I don't know what you mean because I can't go into
13 his demeanor or his actions -- yes, his actions which I saw,
14 but I don't know his attitude about it. If he meant to be
15 comical about it or what.

16 Q You say afterward you observed Mr. Quiles tear
17 open that envelope?

18 A Yes.

19 Q Could you identify the particular envelope?

20 A Yes, I can. It's a red and white envelope.

21 Q Did you believe that to be a Silesian Mission
22 envelope?

23 A Yes, I did.

24 Q Did you believe that based on the color of the
25 envelope?

2 A Yes, I did.

3 Q You did not make any observation of the actual
4 addressee?

5 A No, I could tell by the color that -- it's an out-
6 standing envelope, one half is red and one half is white.

7 Q So you make your conclusion based on the color of
8 the envelope alone?

9 A Yes.

10 Q When Quiles tore open the envelope where was
11 Quiles in relation to Session?

12 A Mr. Quiles was diagonally behind Mr. Session.

13 Q Was Session then back at work?

14 A After he gave him the letter, yes.

15 Q That's correct?

16 A Right.

17 Q Was Session's back towards Quiles?

18 A His physical back, yes.

19 Q So Session could not see what Quiles was doing;
20 is that correct?

21 A They were turning around, they were in conversa-
22 tion most of the night so he could see what he was doing
23 any time he wished to.

24 Q I'm now referring to the specific moment when you
25 say Quiles tore open this envelope. What was Session doing

2 at that point?

3 A Session went back to his place of assignment.

4 Q So he was not looking at Quiles?

5 A No, he wasn't at that time.

6 Q And his back was towards Quiles?

7 A It could have been, because as I said they were
8 in constant conversation.

9 Q About what time of the morning did that occur, sir?

10 A I would say approximately 2:00 a.m.

11 Q Then you say that you subsequently observed
12 Mr. Session through a letter to another employee?

13 A Yes.

14 Q Did you know who that other employee was?

15 A Yes, I do.

16 Q Who was that?

17 A His name is Copes.

18 Q When you say throw the letter to him, could you
19 describe for the Court and the jury what you observed on
20 that instance?

21 A As opposed to placing the letter, he threw it in
22 the man's tray like that [indicating].

23 Q About how long a distance did the throw cover?

24 A He walked over to his tray and just threw it down
25 into the tray.

Q How was he holding the letter while walking over to the other employee's tray? Was that in his armpit?

A No, this was in his hand this time.

Q Was it open in his hand?

A It was in his hand as you or I would handle an envelope.

Q In the fashion that you are now holding the envelope?

A Yes.

Q Was his arm extended outward in that manner, or similar to that manner?

A Well, I can't answer that. I don't remember if it was straight out or crooked or how.

Q Well, how --

A But he did throw it into the man's tray.

Q It wasn't bunched into his body?

A No, it was not.

Q There was no effort at hiding or shielding what he was doing?

A At that time, no.

Q What time was that?

A That was shortly after the first letter was given to Mr. Quiles.

Q About what time?

A Oh, I'd say ten to fifteen minutes later.

INTERVENING PAGES OF TRANSCRIPT OMITTED

1 camds

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2 But not to warrant a conclusion that a conspiracy existed
3 between these people.

4 MR. SUSSMAN: I think the short answer to that is,
5 your Honor, the defendant's statement, Exhibit 10-A.

6 THE COURT: The motion is denied.

7 MR. PRAVDA: Judge, with regard to the defense,
8 in going ahead the Government has a video tape of certain
9 transactions which occurred in this area and I would like
10 that played in defense.

11 Now, my recollection is it's got a running time
12 of about an hour, and if your Honor would prefer to get that
13 done now it might be convenient to take us right up to
14 5:00 o'clock.

15 MR. SUSSMAN: May I say two things, your Honor --

16 MR. PRAVDA: But one other thing, I don't know,
17 and I call upon the Government, I spoke to Mr. Sussman about
18 it and he said he would cooperate with me, I don't really
19 know which of his agents he would wish me to call just to
20 put the tape in.

21 MR. SUSSMAN: Well, the tape is complicated in
22 at least two ways, your Honor. One is that we have regrettably
23 only one television sheet which will show it and we have
24 tried for twenty-four hours now to get more of them, but
25 we have as yet only the one and it has a small screen.

2 The second point is that we would object to the
3 playing of any portion of the tape that relates to February
4 13th. We would be prepared to prove if necessary that
5 Mr. Session was not present on February 13th, therefore we
6 would consent to the playing of the tape only with respect
7 to the 15th of February when he was present. And we have
8 in the witness room the fellow who took the tape on these
9 two days, and the two or three or four of the people who
10 made observations and helped with the taking of the tape
11 on those days. And we would think it proper that the tape
12 not simply be layed upon the table, that it be put on by
13 some witness and they will be provided with whatever witness
14 he wants to have it put in by.

15 MR. PRAVDA: I think if someone can say that's
16 so-and-so other than Session -- I don't know if they will
17 be able to recognize him on the tape. They may need other
18 people. They will need somebody to say that's Mr. X, Mr. Y.

19 THE COURT: Well, Mr. Sussman suggested that he
20 will make the witness available; is that right?

21 MR. SUSSMAN: Yes, sir.

22 MR. PRAVDA: And I would urge the Court to permit
23 me to play the entire sequence, including the day on which
24 admittedly Mr. Session was not there.

25 THE COURT: Well, what is the relevancy of that?

2 MR. PRAVDA: I think that I would like the jury
3 to know the atmosphere and the ambiance, so to speak, of
4 the work area, as to what was going on. They will observe
5 other facts by people having nothing to do with this defend-
6 ant, and I think it will place in context the actions that
7 they do see of this defendant when he does give letters to
8 his fellow employees.

9 THE COURT: Well, that is not relevant evidence.
10 It has no bearing on the issues in the case.

11 MR. SUSSMAN: We would oppose it on that ground,
12 your Honor.

13 THE COURT: The rest of the video that indicates
14 or contains observations of your client and others who
15 allegedly were involved in the conspiracy will be received.

16 MR. PRAVDA: I think it is a separate tape.

17 MR. SUSSMAN: I don't really recall. We played
18 it yesterday for Mr. Pravda the entire afternoon with its
19 sound track on which we cannot identify the voices with well.
20 We don't know who is speaking. We surmise they are postal
21 inspectors, but we can't tie-up voices.

22 MR. PRAVDA: Is it possible to play it without
23 the sound track?

24 MR. SUSSMAN: I would think so. I this morning
25 asked the fellow who best understands this piece of

1 camds

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2 technology whether it was possible to start it at the beginning
3 of the 15th and he assures me that it is. To leave out the
4 stuff of the 13th.

5 THE COURT: Well, do you have any other witness
6 you want to bring forth?

7 MR. PRAVDA: Yes, the defendant will testify in
8 his own behalf, your Honor.

9 THE COURT: Well, I have some lawyers coming in
10 at 4:30. Do you want to go forward with him now?

11 MR. PRAVDA: I don't think he could be completed
12 in the half-hour, and I have just I suppose a personal
13 aversion to having his testimony broken up, to have the
14 cross-examination fresh in the jury's mind in the morning
15 without the direct.

16 THE COURT: Well, you say this other item will
17 take about an hour.

18 MR. PRAVDA: Then they will have both the direct
19 and the cross and they will draw their own conclusions.

20 THE COURT: You can't set this up in terms of
21 your own convenience. We have got another twenty minutes.
22 Let's go ahead now.

23 [In open court]

24 THE COURT: We will have about a five-minute
25 recess, we will sit until about 4:30 today.

INTERVENING PAGES OF TRANSCRIPT OMITTED

2 A Yes, I did.

3 Q What job did you have in the Postal Service?

4 A I was a distribution clerk at the Penn Terminal.

5 Q Was it your job to work in the New York State
6 Culling Section?

7 A Yes, it was.

8 Q What did your job entail?

9 A Well, we had -- they didn't have anything else for
10 us to do so they gave us a job separating mail.

11 Q About how many trays an hour could a postal clerk
12 separate and cull?

13 A Three or four.

14 Q How many trays of mail was your group given for
15 an entire evening as a shift?

16 A Three or four.

17 Q So you had an hour's work to do all night?

18 A Yes.

19 Q Was that the same for all of the other people
20 you worked with?

21 A Yes.

22 Q Were they also all veterans under the Veterans
23 Reinstatement Act?

24 A Yes.

25 Q Is it fair to say that there was a lot of horseplay

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Sessoins - direct

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2 in your working area?

3 A Yes.

4 Q What hours was your shift?

5 A From midnight till 8:30 a.m.

6 Q Did you have to horseplay and goof off just to make
7 the time go by?

8 A Yes.

9 Q Was that because you really weren't given a full
10 night's work?

11 A Yes.

12 Q Let me direct your attention to the morning of
13 the 16th of February, 1974. Were you working that morning?

14 A Yes, I was.

15 Q Do you remember on that morning whether or not
16 you ever gave a letter to Jose Quiles?

17 A Yes, I did.

18 Q You did give a letter to Mr. Quiles?

19 A Yes, I did.

20 Q How did you give him that letter?

21 A I just threw it to him. Told him to go buy him
22 a cup of coffee.

23 Q Why did you say to him, go buy a cup of coffee?

24 A It's a joke we have in the Postal Service.

25 Q Could you explain the joke to the Court and the

2 jury?

3 A Well, people have a bad habit, even though you
4 tell them not to they put money in the mail. And they are
5 not supposed to. So then you find these letters with coins
6 and everything, you know.

7 Q And you can tell --

8 THE COURT: Why don't you let him finish his answer.

9 MR. PRAVDA: Okay. Excuse me, your Honor.

10 A And when you find them you have to take them out
11 of the other mail so when you take them out you will throw
12 it to another employee, throw it in an empty tray because
13 it's like, you call it junk mail.

14 Q Why do you have to take it out of the other mail
15 if there are coins in it?

16 A It wouldn't fit through the machines.

17 Q So that's a part of your job, to segregate that
18 mail?

19 A Yes.

20 Q When you say you throw it to other employees,
21 could you explain to the Court and jury why you do that?

22 A It's a joke that we all do.

23 Q What is the joke?

24 A Well, it's a joke about they always -- they
25 constantly tell us about not stealing money and how we'll

2 get caught.

3 Q Who is they?

4 A The supervisors and higher-ups. So we joke about
5 it.

6 Q Did you actually ever steal a letter?

7 A No, I did not.

8 Q And you actually throw mail to other people and
9 say, go buy yourself a cup of coffee?

10 A Yes, I do..

11 Q When you do that do you actually think the person
12 to whom you have thrown the letter is going to steal the mail?

13 A No, I don't.

14 Q And the people, all of the different employees
15 there did they all throw mail around like that?

16 A Yes, they do.

17 Q And when you gave the letter, you heard the testi-
18 mony here, when you gave the letter to Jose Quiles I believe
19 the testimony was under your armpit?

20 A Yes.

21 Q Were you hiding that or were you making a joke?

22 A I was making a joke, like I was trying to sneak
23 it to him.

24 Q But you weren't really sneaking it to him?

25 A No. Everyone could see it.

INTERVENING PAGES OF TRANSCRIPT OMITTED

1 camds
2 Q And you could do three or four of those in an hour?

3 A Yes.

4 Q And you think each of your brother employees
5 could have done three or four of those in an hour as well;
6 is that right?

7 A Yes, I do.

8 Q Did I understand you to say that each of you was
9 given three or four trays for an entire evening?

10 A We were not given an exact number of trays. They
11 would bring in a cart with the trays on it and each one of
12 us would windup with three or four.

13 Q How many trays were there on the cart?

14 A About twenty. The carts were different sizes.

15 Q How many employees were there?

16 A Seven.

17 Q So by your statement that cart should have been
18 disposed of among the seven of you in an hour; is that
19 correct?

20 A It could have been.

21 Q Was it?

22 A No, it was not.

23 Q Why not?

24 A Because if we finished off all the mail we wouldn't
25 have anything to do.

2 Q What about all this horsing around that you were
3 doing anyway?

4 A That's why we did it. We didn't have anything else
5 to do. We had to make the mail last the entire evening.

6 Q Did you ever conduct the experiment of finishing
7 the entire cart in an hour to see what would happen?

8 A We have done it.

9 Q When did you do it?

10 A When we first started working at the post office.

11 Q When was that?

12 A August of '73.

13 Q You were culling mail in August of '73?

14 A Yes, I was.

15 Q In the Penn Terminal?

16 A Yes.

17 Q In the basement of the General Post Office?

18 A Yes, I was.

19 Q And you culled mail steadily from August of '73
20 until when?

21 A Until February '74.

22 Q Until the 16th of February, 1974?

23 A Yes, I did.

24 Q Six months roughly?

25 A Yes.

INTERVENING PAGES OF TRANSCRIPT OMITTED

Q That's Mr. Session putting a letter in his armpit that you described; is that right?

A Right, then he gave it to Mr. Copes.

Q We're watching Mr. Copes now?

A Yes.

Q Who are we watching now?

A That's Mr. Lee.

Q We're watching Mr. Session in the center of the screen right now?

A Yes.

Q Now we have Mr. Session in the foreground and Mr. Quiles in the background?

A That's right.

Q Now who are we watching?

A That's Mr. Mahoney on the foreground, that's Mr. Lambertson.

Q Is he rifling a letter there?

A I believe he has just rifled the letter and dumped out its contents into the tray.

Q Who's that dancing?

A Mr. Lee.

Q And that's Mr. Session dancing right there?

A Yes.

Q We're watching Mr. Delarosa again?

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2 CHARGE OF THE COURT

3 THE COURT: Members of the jury, we are now at
4 the point where you will soon undertake your final function
5 as jurors, and here you will perform one of the most sacred
6 obligations of citizenship, that is acting as ministers of
7 justice.

8 You are to approach your duties in an attitude of
9 complete fairness and impartiality and, as was emphasized
10 by me at the time of your selection as jurors, without bias
11 or prejudice as to either the Government or the defendant as
12 parties to this litigation.

13 The fact that the trial was of comparatively short
14 duration in no sense betokens its importance. It is important
15 to the defendant who is charged with the commission of a
16 serious crime, equally it is important to the Government
17 for the enforcement of the criminal laws, and the laws pertain-
18 ing to the integrity of the mail is a matter of prime concern
19 to the community.

20 Let me add, the fact that the prosecution is
21 brought in the name of the Government, the United States of
22 America, entitles it to no greater consideration than that
23 accorded to any other party to a litigation. By the
24 same token, it is entitled to no less consideration. Under
25 our system of laws all parties, Government, corporations

2 and individuals alike, stand as equals at the bar of justice.

3 Your final function is to decide and pass upon the
4 disputed fact issues. You, the members of the jury, are the
5 sole and exclusive judges of the fact. You pass upon the
6 weight of the evidence. You determine the credibility of
7 witnesses. You resolve such differences as there may be
8 in testimony, and you draw whatever reasonable inferences
9 may be warranted by the facts as you determine them.

10 My function at this point is to instruct you as to
11 the law. It is your duty to accept these instructions of
12 law and to apply them to the facts as you determine them.

13 With respect to any fact matter it is your recol-
14 lection and yours alone that governs. Anything that counsel
15 for either the Government or the defense may have said during
16 the progress of the trial, whether made during the course of
17 a statement, included in a question, advanced during the
18 summation, is not to be taken in place of your own independent
19 recollection. That governs at all times.

20 So, too, if during the course of these instructions
21 I make reference to facts which do not accord with your own
22 recollection, you are to rely, as I said previously, upon
23 your own recollection. That governs at all times.

24 Before we consider the precise charge against the
25 defendant on trial some preliminary matters should be noted.

2 As you know, the indictment as returned by the grand jury
3 accuses Larry Session and Jose R. Quiles and other known and
4 unknown persons with the crime of conspiracy which we shall
5 presently consider.

6 The indictment has been severed, or separated as
7 to Quiles so that only the defendant Session is on trial
8 before you. The reason for the severance is not to enter
9 into your deliberations. Nor may you in any respect draw
10 any inference against the Government or the defendant here
11 on trial by reason thereof.

12 Guilt is personal. The guilt or innocence of the
13 defendant on trial before you must be returned separately
14 with respect to him solely upon the evidence presented against
15 him or the lack of evidence. The case against the defendant
16 stands or falls upon the proof or the lack of proof of the
17 charges against him and not against someone else.

18 There are certain principles of law which apply
19 in every criminal case and to which I made reference at the
20 time of your selection as jurors, and I repeat these. The
21 indictment is merely an accusation, a charge. It is not
22 evidence or proof of the defendant's guilt. He has pled not
23 guilty. Thus the Government has the burden of proving the
24 charge against him beyond a reasonable doubt.

25 The defendant does not have to prove his innocence.

On the contrary, he is presumed to be innocent of the charge contained in the indictment. This presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the trial, is in his favor as I instruct you now and remains in his favor during the course of your deliberation in the jury room. It is removed only if and when the Government sustains its burden of proving the charge beyond a reasonable doubt.

The question that naturally comes up then is what is a reasonable doubt? The words almost define themselves. That there is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt which appeals to your reason, your common sense, your experience and your understanding. It is not caprice, whim or speculation. It is not an excuse to avoid performance of an unpleasant duty. It is not sympathy for a defendant.

If, after a fair and impartial consideration of all the evidence, you can, candidly and honestly, say that you are not satisfied of the guilt of the defendant, that you do not have an abiding conviction of the defendant's guilt in sum, if you have such a doubt as would cause you as prudent persons to hesitate before acting in matters of importance to your-

2 selves, then you have a reasonable doubt, and in that circum-
3 stance it would be your duty to acquit.

4 On the other hand, if after such a fair and im-
5 partial consideration of all the evidence you can candidly
6 and honestly say that you do have an abiding conviction of
7 the defendant's guilt, such a conviction as you would be
8 willing to act upon in important matters in the personal
9 affairs of your own lives, then you have no reasonable doubt,
10 and in that circumstance it would be your duty to convict.

11 One final word on this subject. Reasonable doubt
12 does not mean a positive certainty, or beyond all possible
13 doubt. If that were the rule few men, however guilty they
14 might be, would be convicted. It is practically impossible
15 for a person to be absolutely and completely convinced of
16 any controverted fact which by its nature is not susceptible
17 of mathematical certainty.

18 In consequence, the law in a criminal case is that
19 it is sufficient if the guilt of a defendant is established
20 beyond a reasonable doubt, not beyond all possible doubt.

21 As I have already mentioned, the indictment charges
22 the commission of the crime of conspiracy to violate the law
23 against embezzlement of mail by postal employees. The
24 essence of the crime of conspiracy is an agreement, an under-
25 standing or a scheme to violate other criminal laws. Thus

2 under a conspiracy charge there is no need to prove an
3 actual violation of the law which is the object of the con-
4 spiracy.

5 A conspiracy which is sometimes referred to as a
6 partnership in crime because it involves collective, or
7 organized action, presents a greater potential threat to the
8 public interest than the illicit activity of a single indi-
9 vidual. Group association, or organized activity renders
10 detection more difficult than in the instance of a single
11 or lone wrongdoer.

12 It was for these and other reasons that Congress
13 made a conspiracy, or concerted action to violate a Federal
14 law a crime entirely separate, distinct and different from
15 the violation of the law or laws which may be the objective
16 of the conspiracy.

17 Thus Congress has provided in Section 371 of
18 Title 18, United States Code that is called the Federal
19 Criminal Laws, so far as here pertinent, "if two or more
20 persons conspire to commit any offense against the United
21 States and one or more of such persons do any act to effect
22 the object of the conspiracy, each shall be guilty of a
23 criminal offense."

24 This is the law that the defendant on trial is
25 charged with violating.

2 The law it is charged the defendants conspired to
3 violate is another provision, Section 1709 of Title 18 of
4 the Federal Criminal Laws, that is which reads in pertinent
5 part as follows: "Whoever being a Postal Service employee
6 embezzles any letter or mail or any article or thing contained
7 therein entrusted to him, or which comes into his possession
8 intended to be conveyed by mail, commits a crime."

9 Thus in substance the conspiracy charges that
10 Session, together with Quiles and other known and unknown,
11 unlawfully, willfully and knowingly conspired together to
12 embezzle letters and their contents which came into their
13 possession as Postal Service employees.

14 Section 1709 uses two expressions that I shall
15 define for you. A person is said to embezzle the property
16 of another if he is entrusted with it or it comes into his
17 possession by virtue of some office or position of trust
18 and he wrongfully takes it or willfully misappropriates it.
19 A letter intended to be conveyed by mail within Section 1709
20 includes a so-called test letter, the contents of which are
21 recorded and which is deposited in the work area by postal
22 inspectors who intend that it be intercepted and withdrawn
23 from the mail.

24 The use of such test letter to detect those
25 suspected of embezzling mail is a proper activity of enforce-

2 ment officers or postal inspectors and investigators.

3 Now, with the foregoing general instructions let
4 us turn to the indictment.

5 The grand jury charges, 1, from on or about
6 the first day of January , 1973 and continuously thereafter,
7 up to and including the date of the filing of this indictment,
8 Jose R. Quiles and Larry Session, the defendants, and others
9 known and unknown to the grand jury, unlawfully, willfully
10 and knowingly combined, conspired, confederated and agreed
11 together and with each other to violate Section 1709 of
12 Title 18, United States Code;

13 2, it was a part of said conspiracy that said
14 defendants being Post Service employees would and did em-
15 bezzle letters and mail which came into their possession
16 and which were intended to be conveyed by mail.

17 The indictment then sets forth the commission
18 of various overt acts which I shall presently discuss. In
19 order to convict the defendant on trial the Government must
20 prove beyond a reasonable doubt the following essential
21 elements: 1, the existence of the conspiracy charged in
22 the indictment;

23 2, that the defendant knowingly and willfully
24 associated himself with the conspiracy and;

25 3, that one of the conspirators knowingly committed

at least one of the overt acts set forth in the indictment at or about the time and place alleged.

The first element is the existence of the conspiracy. What is a conspiracy? The idea of a conspiracy is simple. It is a combination, agreement or understanding of two or more persons by concerted action designed to accomplish criminal purposes, or some purpose not in itself unlawful or criminal by criminal or unlawful means.

In this case the Government contends that the conspiracy was to accomplish an unlawful purpose, principally the embezzlement from the mails by postal employees of envelopes which contained money.

The gist of the crime is the unlawful combination or agreement to violate the law. The success or failure of the conspiracy is immaterial to the question of the guilt or innocence of the conspirators, although here the Government contends that the conspiracy was successful in substantial measure in that one alleged co-conspirator, Quiles and others, actually came into possession of currency contained in envelopes, some of which the Government claims was passed to them by the defendant on trial.

Proof of the accomplishment of the objectives of the conspiracy is persuasive evidence of its existence. Hence, success of the venture, if you find it was successful,

2 is strong evidence of the illicit agreement.

3 A conspiracy has sometimes been called a partner-
4 ship in criminal purposes in which each member becomes the
5 agent of every other member. To establish a conspiracy
6 the Government is not required to show that two or more
7 persons sat around a table and entered into a solemn pact
8 orally or in writing stating that they have formed a con-
9 spiracy to violate the law, or the details or the means by
10 which its object was to be achieved. Common sense will tell
11 you that when men in fact undertake to enter into a criminal
12 conspiracy much is left to the unexpressed understanding.
13 What the evidence must show in order to establish that a
14 conspiracy existed is that the persons in some way or manner
15 through any contrivance, implicitly or tacitly came to a
16 common understanding to violate the law or to accomplish the
17 unlawful plan.

18 In determining whether there has been an unlawful
19 agreement you may judge acts and conduct of the alleged co-
20 conspirators which are done to carry out an apparent criminal
21 purpose. The adage, actions speak louder than words, is
22 applicable here. Usually the only evidence available is
23 that of disconnected acts and conduct on the part of the
24 alleged individual conspirators, which acts and conduct
25 however when taken together in connection with each other

2 and considered as a whole permit an inference that a con-
3 spiracy existed as conclusively as by direct proof.

4 You must first determine whether or not the proof
5 establishes the existence of the conspiracy as charged in
6 the indictment.

7 In deciding this first element you should consider
8 all the evidence which has been admitted with respect to the
9 conduct, acts and declarations of each alleged co-conspirator,
10 that is Session, Quiles or others not named, and such in-
11 ferences as may be reasonably drawn therefrom.

12 It is sufficient to establish the existence of the
13 conspiracy if from the proof of all the relevant facts and
14 circumstances you find beyond a reasonable doubt that the
15 minds of the co-conspirators met in an understanding way to
16 accomplish by the means alleged one or more objects of the
17 conspiracy as charged in the indictment.

18 If you are satisfied that the conspiracy charged
19 existed, then you consider the second element of the offense,
20 who the members of the conspiracy were. You must consider
21 defendant Larry Session separately. In deciding whether the
22 defendant was a member of the conspiracy you should consider
23 whether on all the evidence he knowingly and purposely
24 entered the conspiracy.

25 In determining whether he became a member of the

2 conspiracy you must determine not only whether he participated
3 in it, but whether he did so with knowledge of its unlawful
4 purpose. Did he join with awareness of at least some of
5 the basic aims and purposes of the conspiracy?

6 Knowledge is a matter of inference from facts
7 proven. What is necessary is that the defendant willfully
8 participate with knowledge of at least some of the purposes
9 of the conspiracy and with intent to aid in the accomplish-
10 ment of those unlawful ends.

11 To act or participate willfully means to act or
12 participate voluntarily and intentionally and with specific
13 intent to do something the law forbids. That is to say,
14 to act or participate with a purpose either to disobey or
15 to disregard the law.

16 So, if the defendant with understanding of the
17 unlawful character of the plan knowingly encourages or advises
18 or assists for the purpose of furthering the undertaking of
19 a scheme, he becomes a willful participant, a conspirator.

20 Once you have found a conspiracy to exist and the
21 defendant to have knowingly participated in it, the extent
22 of his participation has no bearing on his guilt or innocence.
23 In other words, he may play a larger role or a smaller role,
24 that does not matter.

25 The guilt of the conspirator is not measured by

2 the extent or the duration of his participation. Even if
3 he participated in it to a degree more limited than that
4 of his co-conspirators, he is equally culpable so long as
5 he was in fact a conspirator.

6 So, too, if you find Session was a knowing partici-
7 pant, the fact that he did not share in the embezzled moneys
8 is immaterial. The Government, however, claims that he,
9 too, during the conspiracy pocketed money taken from the
10 mail which came into his possession.

11 When people enter into a conspiracy to accomplish
12 an unlawful end they become agents for one another in carry-
13 ing out the conspiracy. Hence the acts or declarations of
14 one in the course of the conspiracy and in furtherance of
15 the common purpose are deemed to be the acts of all, and
16 all are responsible for such acts.

17 Accordingly, if you find in accordance with these
18 instructions that the alleged conspiracy existed and that
19 the defendant on trial was a participant, then acts done and
20 statements and declarations made in furtherance of the
21 conspiracy by the persons found by you to have been members
22 of the conspiracy may be considered against the defendant
23 even though such acts or declarations were made in his
24 absence and without his knowledge.

25 Thus, the receipt of letters and the taking of

money therefrom by Quiles, if you find he and Session were conspirators, would be binding on Session even if he did not share in the proceeds of the embezzled funds.

Summing it up in a simple way, if in fact there was a partnership in crime, each partner acts and speaks for the other on the partnership business even if he was not present and is responsible for all the acts of all other conspirators.

The agreement of conspiracy and a defendant's participation therein is rarely susceptible of proof by direct evidence. Usually these are established as a matter of reasonable inference based upon circumstantial evidence.

The law recognizes two types of evidence, direct and circumstantial, upon which jurors may rely to find an accused guilty of a crime. Direct evidence is where a witness testified to what he saw, heard or observed and what he knows of his own knowledge. That which comes to him by virtue of his senses.

Circumstantial evidence is where facts are established from which in terms of common experience one may logically infer other facts that are sought to be established.

Circumstantial evidence, if believed, is of no less value than direct evidence. For, in either case you must be convinced beyond a reasonable doubt of the guilt of the

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2 defendant.

3 Now, sometimes in order to point up the difference
4 between the direct evidence and circumstantial evidence I
5 give an example to the jurors in the hope that it does clarify
6 matters.

7 Now, assume as, well, as was the fact today, we
8 do know that we entered the courtroom, it was a clear, bright,
9 sunny day; then you entered the jury box, and you have the
10 Venetian blinds behind you, and in addition to the blinds
11 there were drapes over the blinds so you could not look out.
12 In other words, you couldn't say directly by virtue of your
13 own senses that it was a clear, sunny day.

14 Now, after we have been sitting here for a while
15 assume that somebody walked into the courtroom with an umbrella
16 apparently wet, soon followed by a person wearing a raincoat
17 which obviously was wet, and a little while later you heard
18 a pitter-patter on the window.

19 Now, by direct evidence, because you cannot look
20 out and observe the weather conditions, you could not describe
21 what was going on. But, bearing in mind the three incidents
22 which I referred to, a person coming in with a dripping wet
23 umbrella, a man with a raincoat that was wet, and the pitter-
24 patter on the window, even though you couldn't look out,
25 and bearing in mind that it was a dry, clear, sunny day when

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2 you entered, you would be justified in drawing the inference
3 that it was actually raining outside. That is what circum-
4 stantial evidence amounts to.

5 In this case the Government relies upon both direct
6 and circumstantial evidence. If the reasonable inferences
7 to be drawn from any evidence leads to two conclusions, one
8 favoring guilt, and the other favoring innocence, then it is
9 your duty to accept that which favors innocence.

10 Now, whether a defendant knowingly and intentionally
11 participated in the claimed conspiracy presents an issue of
12 fact, and I would say in the light of the evidence that was
13 presented here that this is a prime issue of fact.

14 Clearly this concerns what is in one's mind and
15 the purpose which motivates him in his course of conduct.

16 Medical science has not yet devised an instrument
17 to record criminal or willful intent. It is a mental process,
18 an attitude. Usually direct proof of it is not available.
19 Once in a rare occasion a man might write a letter as to
20 what he intended, but that, as I said, would be very unusual.

21 Intent and motive are usually determined from the
22 acts, conduct and circumstances, and such inferences as may
23 reasonable be drawn or arise from a combination of acts and
24 circumstances.

25 If you find circumstances of secrecy, intrigue

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2 or deviousness, or attempts by defendant to conceal the real
3 nature of a transaction, these may be considered by you as
4 circumstantial evidence of criminal intent, or consciousness
5 of guilt.

6 Under this conspiracy count a word of caution.
7 Mere association of a defendant with an alleged conspirator,
8 or conspirators, does not establish his participation in a
9 conspiracy if you find one did exist. So too, mere knowledge
10 by the defendant of a conspiracy or of an illegal act on the
11 part of an alleged co-conspirator is not sufficient to
12 establish his membership in the conspiracy.

13 Before the inference may be drawn you must be
14 satisfied from the evidence presented by the Government that
15 the defendant knowingly and intentionally associated himself
16 with it.

17 Now we come to the third element you must consider,
18 assuming you found that the alleged conspiracy existed and
19 that the defendant was a member of it, and that is the re-
20 quirement of an overt act.

21 The offense of conspiracy is complete when the un-
22 lawful agreement is made and any overt act is done by a
23 conspirator or, in the language of the statute, effect the
24 object of the conspiracy.

25 Hence the overt act required is one which furthers

the objectives or purposes of the conspiracy. It does not have to be a criminal act or an act which in itself constitutes an objective of the conspiracy. It may be an act which is innocent on its face, but it must be of such character that it furthers or promotes or aids and assists in accomplishing the purpose of the conspiracy.

It is not necessary for you to find that both of the alleged overt acts charged in the indictment which I shall presently read were committed, nor is it necessary that an overt act implicate the defendant on trial before you.

Nor is it necessary that the defendant personally performed the overt act. It is enough if you find that at least one of the named overt acts was committed by a conspirator, not necessarily the defendant, and that it was in furtherance of the conspiracy.

Now, the overt acts charged in the indictment are, in furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York, and the post office building that was referred to during the course of the testimony is within the Southern District of New York, 1, on or about the 16th day of February, 1974, at the General Post Office, New York, New York, Larry Session, the defendant, handed a letter to Jose R. Quiles, the defendant;

2 Overt Act 2, on or about the 16th day of February,
3 1974, at the General Post Office, New York, New York, Jose R.
4 Quiles, the defendant, opened a letter and removed money
5 therefrom.

6 I would point out that these overt acts do not
7 charge the letter which Session handed to Quiles was the
8 same letter that Quiles opened. Thus it is sufficient for
9 this element if the Government proved beyond a reasonable
10 doubt either that Session passed Quiles a letter or that
11 Quiles opened the letter and removed money therefrom.

12 There is no requirement the Government prove the
13 letter which Quiles opened was a letter which Session had
14 handed to him.

15 Incidentally, the period of time charged in the
16 indictment runs from on or about January 1st, 1973 to July 8,
17 1974, the date of the filing of the indictment. It is not
18 necessary for the Government to prove that the conspiracy
19 started and ended on those specific dates. Indeed, the evi-
20 dence would indicate the Government contends that it started
21 toward the end of January and continued up to February 16,
22 the time this defendant and others were arrested.

23 It is sufficient if you find that in fact a con-
24 spiracy was formed, existed for some substantial time within
25 the period set forth in the indictment and that at least

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2 one overt act was committed during that period.

3 Now, with these general principles as a guide you
4 will consider what the Government has established by the
5 required degree of proof, one, the existence of the unlawful
6 agreement as charged in the indictment; two, that the defend-
7 and knowingly and willfully associated himself with the
8 conspiracy and, three, the commission of at least one of
9 the overt acts in furtherance thereof.

10 Since the trial was of short duration and counsel
11 for the Government and defense have just reviewed in detail
12 the evidence and emphasized their respective contentions,
13 it would be needless repetition to review in detail the
14 evidence of each witness.

15 You are instructed, however, whether or not
16 reference is made to specific matters, that all evidence in
17 the case is important and must be considered by you.

18 To establish its case the Government relies upon
19 the testimony of postal inspectors who in the period between
20 January 31 and February 16, 1974, at various times had under
21 surveillance the defendant, Session, the co-defendant,
22 José R. Quiles and other employees who worked in the same
23 culling area.

24 According to the testimony of Inspector Thomas
25 McCormick, on February 12 he saw Session select a letter

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2 from his tray, and after looking furtively from side to side
3 tear open the envelope which was addressed to the Silesian
4 Mission and extract money therefrom which he placed in his
5 trousers' pocket.

6 Further, that about an hour later he saw Session
7 select two similar appearing Silesian Mission envelopes
8 which he placed in Quiles' tray, who then picked up these
9 two letters and put them in his pocket.

10 McCormick further testified that on February 16
11 he saw defendant select three Silesian envelopes, hand them
12 to Quiles who put them in his pocket.

13 Incidentally, that the Government did not prosecute
14 the defendant for the alleged embezzlement of letter material
15 with respect to the incident of February 12th is immaterial.
16 That evidence was offered as proof of a fact in furtherance
17 of the conspiracy.

18 Other postal inspectors testified as to their
19 observations of defendant and Quiles on February 12th and
20 February 16th. The Government, in addition to the testimony
21 of these witnesses, also relies upon admissions made by the
22 defendant, both orally and in writing, following his arrest.

23 Under the law a person who has been arrested and
24 is in custody may be questioned by the authorities if he has
25 been properly advised of his constitutional rights.

2 If you find that after being advised of his
3 constitutional rights as the inspector testified Session
4 was so advised, and he voluntarily made those statements,
5 then they are entitled to great weight, since a person
6 ordinarily does not make admissions or statements against
7 his own interest.

8 Indeed, admissions against self-interest have also
9 been considered as the highest character of evidence. One
10 of those written statements, Exhibit 10, does not mention
11 the name of any other person arrested on February 16, 1974.
12 The other statement, Exhibit 10-B does mention names of
13 such other persons.

14 You have heard testimony that there is a legal
15 reason for the preparation of two separate statements. I
16 instruct you that the preparation of two separate statements
17 is in no way improper.

18 Further, that as a matter of law a statement made
19 after his arrest by one alleged co-conspirator may not be
20 used as evidence against another alleged co-conspirator.
21 And, that if such a statement by one alleged co-conspirator.
22 were to name another alleged co-conspirator, that statement
23 would not be admitted as evidence if both were named in it
24 and were on trial together.

25 It is to avoid this situation during the progress

of the trial that separate statements are often taken, and this was entirely proper.

Now let us turn to the defense. Session denies that he stole the contents of the letter on February 12th as McCormick testified. He admits he gave a letter to Quiles on February 16th and told him to buy a cup of coffee, but that this was horseplay in which those in the work area indulged.

Session also testified that on other occasions he removed letters which he thought contained dollar bills; that he passed Silesian and Franciscan envelopes which he knew usually contained money to other employees, but, again, that this was done as a joke.

In sum, defendant disavows that he had criminal intent in passing these envelopes to fellow employees.

The Government responds that the fact that defendant knew the envelopes contained money, and the number of occasions this was done emphasizing defendant's own statement, or testimony here that it may have been as often as five hundred times, belies his claim of innocent conduct, and that these circumstances establish criminal intent and that the defendant well knew as a postal employee that his actions were not innocent or a joke, but were violations of law.

2 It also emphasizes that at no time following his
3 arrest did he tell the inspector or set forth in his state-
4 ment that he passed the envelopes as a joke or as horseplay
5 to which defendant responds that he was not asked with
6 respect to those matters.

7 I mentioned previously that medical science has
8 not yet devised an instrument to record criminal or willful
9 intent as of a given time.

10 Was the handing over of letters by defendant to
11 Quiles and others which Session knew usually had money in
12 them a joke, or horseplay? Or was it done with criminal
13 intent as part of a conspiracy of which he was a member to
14 embezzle mail and its contents? This is an issue for you
15 to decide. You decide this, as I have already said, by
16 all the acts, conduct and surrounding circumstances of the
17 events as of the time of their occurrence, and the reason-
18 able inferences to be drawn therefrom.

19 How do you determine the fact issues? There is
20 a conflict in some aspects of the testimony. In your search
21 for the truth you are to be guided by your plain everyday
22 common sense. I frequently say to jurors, when you enter
23 the door of the courtroom and sit during the course of the
24 trial and listen to testimony in the jury box and during the
25 course of your deliberations when the matter has been presented

2 to you for determination, you have your common sense and
3 experience with you. You don't leave it outside the door
4 of the courtroom. You are all persons of experience drawn
5 from different walks of life. You determine the fact issue
6 involving the credibility of persons in the same way you
7 would determine that kind of a question if you were called
8 upon to act in an important matter where you were personally
9 involved.

10 You may recall that I mentioned at the very start
11 of the trial before you heard a single word of testimony
12 that it was desirable and important for you not only to
13 listen but to look at and observe the witnesses as they
14 testified.

15 You determination of the credibility of a witness
16 very largely depends upon the impression he made upon you
17 as to whether or not he was giving an accurate version of
18 what occurred. You have seen the witnesses on the stand,
19 observed their manner of giving testimony. How did the
20 witness impress you? How did his version of what occurred
21 impress you? Was it reasonable?

22 The degree of credit to be given to a witness
23 should be determined by his demeanor, his conduct on the
24 stand. Whether or not one is interested in the outcome of
25 the case, or whether a witness had colored his testimony.

2 Did the witness's version appear to be straightforward and
3 candid, or did he try to hide some of the facts?

4 You may also consider whether or not there is a
5 motive on the part of any witness to testify falsely, and
6 it is for you to decide what interest has affected if at all,
7 the testimony of any witness.

8 The testimony of the defendant is before you. You
9 must decide whether it is credible. When a defendant testi-
10 fies in his own behalf his testimony is subjected to the
11 same scrutiny as that of any other witness.

12 I need not emphasize that a defendant has a vital
13 interest in the outcome of a trial. Indeed, he has the
14 greatest stake in its result. Interest creates a motive
15 for false testimony; the greater the interest the stronger
16 the motive. And a defendant's interest in the result of
17 his trial is of a character possessed by no other witness.

18 In appraising his credibility you may take that
19 fact into consideration. However, it by no means follows
20 that simply because a defendant is interested in the outcome
21 he is not capable of telling the truth and giving a straight-
22 forward story of an occurrence

23 You and you alone determine what credence shall
24 be given to his testimony, just as you do in the case of all
25 witnesses.

2 The fact that the Government witnesses were post
3 office employees does not require that you give greater
4 credence to their testimony than to that of any other witness.
5 You appraise the credibility of all witnesses by the same
6 standard taking into account the same factors to which I
7 have referred.

8 If you found that any witness, and this applies
9 alike to Government and defense witnesses, willfully testi-
10 fied falsely as to any material fact, you have a right to
11 reject the testimony of that witness in totality, or to
12 accept only that part or portion which commends itself to
13 your belief or which you may find corroborated by other
14 evidence in the case.

15 Your function is to weigh the evidence and to
16 determine the guilt or innocence of the defendant solely on
17 the basis of such evidence and these instructions. That is
18 the oath you took as jurors.

19 If the Government has sustained its burden of
20 proof your verdict should be guilty with respect to the in-
21 dictment. If the Government has failed to sustain its burden
22 of proof, then your verdict shall be not guilty.

23 If the evidence warrants a verdict of guilty under
24 your oath of jurors you cannot allow a consideration of
25 the punishment which may be imposed upon the defendant to

2 enter into your deliberations or to influence you verdict
3 in any way. The duty of imposing sentence in the event of
4 conviction rests solely with the Court.

5 Each juror is entitled to his or her own opinion,
6 but each should exchange views with fellow jurors. That is
7 the very purpose of jury deliberation, to discuss and con-
8 sider the evidence, to listen to the arguments of fellow
9 jurors, present your individual views, to consult with one
10 another and to reach an agreement based solely and only on
11 the evidence.

12 Now, if you have a point of view that should
13 differ from that of fellow jurors, and after listening to
14 discussion and argument and reviewing the evidence you are
15 persuaded that an originally held point of view should yield
16 in the light of the evidence and the law, there is no reason
17 why you should not change such an originally held point of
18 view, providing, however, that your final vote at all times
19 must reflect your own conscientious judgment as to how the
20 case should be decided upon the law and the evidence.

21 Now, in order to return a verdict it must be
22 unanimous.

23 Now, would counsel want to come up?

24 [At the side bar]

25 MR. PRAVDA: Judge, I just have one further request

2 and two exceptions. I would except to marshaling the evi-
3 dence in so short a trial, and I would except to towards the
4 end of your charge you used the phrase "determine guilt or
5 innocence" and I would except to that to the extent that the
6 jury may get the wrong impression that they must feel the
7 man is innocent before they can bring back a verdict of not
8 guilty.

9 THE COURT: What do you want me to tell them that
10 they decide whether he is guilty or not guilty?

11 MR. PRAVDA: I would appreciate that now, yes.
12 And the further request, Judge, is that they be instructed
13 that even if they find that in fact the incident alleged on
14 the 12th took place, that they could also find that that was
15 an isolated incident.

16 THE COURT: No, I won't state your request on
17 that. Is that all?

18 MR. PRAVDA: Yes, sir.

19 MR. SUSSMAN: We have no exceptions.

20 [In open court]

21 THE COURT: Members of the jury, at one point I
22 made a reference that you determine guilt or innocence. I
23 thought it was perfectly clear that your function is to
24 decide whether defendant is guilty or not guilty. In other
25 words, whether or not the Government did or did not sustain

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2 its burden of proof.

3 Does that meet your requirement?

4 MR. PRAVDA: Yes, your Honor.

5 THE COURT: All right.

6 Now, off the record.

7 [Discussion off the record]

8 THE COURT: We will now excuse the alternate juror.

9 [Alternate juror excused]

10 THE COURT: What we are going to do now, members
11 of the jury, before you undertake your deliberations we
12 are close to the lunch hour and I have arranged for you to
13 be taken to lunch. So you will go to lunch first, then
14 come back and undertake your deliberations.

15 I suggest that you do not discuss or consider
16 the matter at lunch, after lunch you will immediately come
17 back and you will undertake your deliberations.

18 Swear the marshal, please.

19 [A marshal was sworn]

20 THE COURT: Why don't you go inside and the marshal
21 will go with you and you will all be taken to lunch, and
22 immediately upon coming back undertake your deliberations.

23 [Jury excused]

24 [In the robing room]

25 THE COURT: I have a note from the jury which

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2 reads as follows: "Two jurors want to see second film."

3 Now, both films are in evidence. Do you have the second
4 film?

5 MR. PRAVDA: Yes.

6 THE COURT: All right, set it up and show it to
7 the jury as soon as it is ready.

8 [In open court - jury present]

9 THE COURT: I have a note from the jury which
10 reads, "Two jurors want to see second film," and the film
11 has been set up and we will just have the small television,
12 not the larger ones that were here this morning.

13 Go ahead.

14 MR. SUSSMAN: I will ask Mr. Husarik to operate
15 the equipment, your Honor.

16 MR. PRAVDA: If I can just ask if the jurors are
17 all in a position to see it, or should we move it back?

18 THE COURT: Can you all see it? All right, go
19 ahead.

20 [Video tape run at this time]

21 THE COURT: Is it over? All right, you may resume
22 your deliberations.

23 [Jury leaves to continue deliberations]

xx 24 [Note from jurors marked Court's Exhibit 1]

25 [In open court - jury present]

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2 THE CLERK: The jurors will please answer as their
3 names are called.

4 [Roll of jurors was called - all present]

5 THE CLERK: Madam Forelady, have you agreed upon
6 a verdict?

7 THE FORELADY: Yes, we did.

8 THE CLERK: How do you find?

9 THE FORELADY: We find the defendant guilty.

10 THE CLERK: Ladies and gentlemen of the jury,
11 listen to your verdict as it stands recorded: You say you
12 find the defendant guilty.

13 THE FORELADY: Right.

14 THE CLERK: Thank you.

15 THE COURT: Are there any requests?

16 MR. PRAVDA: May we poll the jury, your Honor?

17 THE COURT: The jury may be polled.

18 [The jury was polled]

19 THE CLERK: Jury polled, your Honor, verdict
20 unanimous.

21 THE COURT: What about the jurors, are they supposed
22 to return tomorrow?

23 THE CLERK: Your Honor, the instructions that I
24 had received are that if they come back before 4:30 they
25 were to go to the jurors office.

